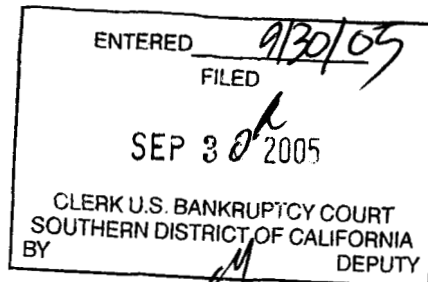


1 WRITTEN DECISION - FOR PUBLICATION

SEP 30 2005

CLERK, U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY DEPUTY



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8 UNITED STATES BANKRUPTCY COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 In re: ) CASE NO. 04-07370-H7  
11 GENE GARDINER, ) MEMORANDUM DECISION  
12 Debtor. )  
13

14 Debtor Gene Gardiner (the "Debtor") claimed an exemption in a  
15 workers' compensation award in the amount of \$37,000 pursuant to  
16 California Code Civil Procedure ("CCP") section 704.160.

17 Before the Court is Leslie Gladstone's, the Chapter 7 trustee  
18 (the "Trustee"), Motion for Summary Judgment. At issue is whether  
19 the Debtor's workers' compensation award lost its exempt status  
20 because the funds were invested in a house.

21 This Court has jurisdiction to determine this matter pursuant  
22 to 28 U.S.C. §§ 1334 and 157(b)(1) and General Order No. 312-D of  
23 the United States District Court for the Southern District of  
24 California. This is a core proceeding pursuant to 28 U.S.C.  
25 § 157(b)(2)(B).

26 I.

27 FACTS

28 Debtor received net proceeds of \$40,326.47 in workers'

compensation due to injuries he sustained in the scope of his employment as a carpenter. He deposited the proceeds in his AXP Management Fund Account (the "AXP Account").

Thereafter, Debtor and his wife purchased a house in Oceanside, California with some community funds and his separate property, including his workers' compensation award. The settlement statement associated with the purchase showed the receipt of funds that were wire transferred from the Debtor's AXP Account in the amount of \$49,360.00.

Subsequently, the Debtor and his wife went through a divorce and it became necessary to sell the house. On November 9, 2002, the house was sold. It was acknowledged in the Addendum to the Residential Purchase Agreement that Debtor contributed his workers' compensation award to purchase the house and that those funds would be returned to him prior to any other distribution of the sale proceeds. Due to the divorce proceedings, all of the sale proceeds were placed in the Debtor's ex-wife's attorney's trust account.

Subsequently, Debtor and his wife reached a stipulation in their dissolution whereby they agreed that \$40,326.57 of the sale proceeds were earmarked as the Debtor's workers' compensation award. That amount was returned to the Debtor and he deposited the funds into his Mission Federal Credit Union account.

## II.

## DISCUSSION

### A. STANDARDS FOR SUMMARY JUDGMENT

Summary judgment is appropriate where the Trustee, as the moving party, shows by "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

1 affidavits, if any, ... that there is no genuine issue as to any  
2 material fact and that the moving party is entitled to a judgment  
3 as a matter of law." Hughes v. United States, 953 F.2d 531, 541  
4 (9th Cir. 1992). Once the moving party meets its initial burden,  
5 the Debtor, as the non-moving party must go beyond the pleadings  
6 and, by his own affidavits or by the depositions, answers to  
7 interrogatories, and admissions on file, come forth with specific  
8 facts to show that a genuine issue of material fact exists. Id. at  
9 541-42; Hansen v. United States, 7 F.2d 137, 138 (9th Cir. 1993).

10 If there is a genuine issue of material fact, the Court cannot  
11 grant summary judgment. A material fact is one which "could alter  
12 the outcome" of the case. Horowitz v. Fed. Kemper Life Assurance  
13 Co., 57 F.3d 300, 302 n.1 (3rd Cir. 1995). It is genuine when it  
14 is "triable," that is, when reasonable minds could disagree on the  
15 result. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475  
16 U.S. 574, 587 (1986).

17  
18 B. THE WORKERS' COMPENSATION AWARD DID NOT LOSE ITS EXEMPT STATUS  
19 EVEN THOUGH IT WAS USED TO PURCHASE THE HOUSE

20 California has opted out of the federal exemptions contained  
21 in 11 U.S.C. section 522(b)(1). The Debtor is therefore permitted  
22 to claim as exempt only that property which is exempt under state  
23 law. See CCP section 703.130; Wolf v. Salven (In re Wolf), 248  
24 B.R. 365, 367 (B.A.P. 9th Cir. 2000). It is undisputed that the  
25 Debtor's workers' compensation award was exempt when initially  
26 received pursuant to CCP section 704.160.

27 It is the Trustee's position, however, that since the Debtor  
28 used his workers' compensation award to purchase the house with his

1 wife, and commingled the award with other funds, the award is no  
2 longer exempt. The Trustee cites no authority for her proposition  
3 that converting the workers' compensation award into another form  
4 of asset automatically results in the award losing its exempt  
5 status and the Court has found none that is directly on point.

6 The Court first examines whether the Debtor's workers'  
7 compensation award lost its exempt status under CCP section 704.160  
8 when it was used to purchase the house. The starting point for  
9 analysis is the relevant exemption statute, CCP section 704.160,  
10 which provides in pertinent part:

11 [B]efore payment, a claim for workers' compensation or  
12 workers' compensation awarded or adjudged is exempt  
13 without making a claim. Except as specified in  
14 subdivision (b), after payment, the award is exempt.

15 In interpreting CCP section 704.160, the Court applies California  
16 rules of construction. Dudley v. Anderson (In re Dudley), 249 F.3d  
17 1170, 1175 (9th Cir. 2001).

18 Under California law, the cardinal rule of statutory  
19 construction is to determine the intent of the  
20 legislature. To determine that intent, a court looks  
21 first to the language of the statute and gives effect to  
22 its plain meaning. If the intent of the legislature is  
23 not clear from the language of the statute, legislative  
24 history may be considered. As an overall approach, we  
25 will construe an exemption statute in favor of the  
26 debtor.

27 Id. (internal citations omitted).

28 The Court must also construe the statute keeping in mind that  
29 "[u]nder the Code and California law, exemptions are to be  
30 construed broadly and liberally in favor of the debtor." In re  
31 Rolland, 317 B.R. 402, 412 (Bankr. C.D. Cal. 2004) citing In re  
32 Arrol, 207 B.R. 662, 665 (Bankr. N.D. Cal.1997). "Where there are  
33 ambiguities in the state [exemption] law they are to be resolved in

1 favor of the bankrupt unless to do so would do violence to the  
2 purpose of the state statutory scheme." In re Sanford, 8 B.R. 761,  
3 765 (N.D. Cal. 1981).

4 The Court finds that CCP section 704.160 is unambiguous. It  
5 simply states that a workers' compensation award after payment is  
6 exempt without any limitations specified. It does not say once the  
7 award is invested in other property it becomes nonexempt. The  
8 Court cannot read into the statute a restriction that is not there.  
9 Presumably if the legislature had intended to place a restriction  
10 on a workers' compensation award's exempt status after payment, it  
11 would have said so as it did in other exemption statutes.<sup>1</sup>  
12 Moreover, the California legislature has specifically manifested  
13 its intent that exempt funds remain exempt even though they are  
14 converted from one form of asset (for example, a check) to another  
15 form of asset (for example, cash or its equivalent in a deposit  
16 account), to the extent the funds can be traced. See CCP 703.080.

17 In construing a similar workers' compensation exemption  
18 statute in New Hampshire, one court noted:

19 [T]here appears to be no basis upon which to distinguish  
20 a bank deposit comprised of workers' compensation  
21 benefits from a car acquired with compensation benefits.  
In each case, identifiable benefits are simply converted  
from one form of asset to another. In the latter

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22  
23 <sup>1</sup> Other exemption statutes address the situation where there is a change of  
24 exempt property from one form to another such as personal or real property into  
25 proceeds. For example, in CCP 704.010 an exemption in a motor vehicle is authorized  
26 in the amount of \$2300, which includes the proceeds of an execution sale or proceeds  
27 of insurance. See CCP 704.010(a). Yet, the statute specifically provides that the  
28 proceeds are exempt for a period of 90 days after the time the proceeds are actually  
received by the judgment debtor at which time the exemption expires. See CCP  
704.010(b). The proceeds can be protected after the applicable time period only  
if they are converted to exempt property. Other statutes are in accord by  
protecting the proceeds of exempt property for certain time periods, see CCP 704.060  
(tools of the trade); CCP 704.020 (household furnishings); CCP 704.720, 704.960  
(homestead).

1 example, the conversion would be entirely consistent with  
2 the benefit's purpose 'to sustain [the injured employee]  
3 in a fashion measurably consistent with his [or her]  
4 former habits of life.'

5 Workers' compensation benefits are expected to be put to  
6 useful purposes, such as buying food, clothing, shelter,  
7 transportation, and other necessities for an injured  
8 employee and his or her family. The protection provided  
9 by the legislature when it exempted 'compensation ...  
10 from all claims of creditors,' would indeed be 'next to  
11 futile' if it operated only as a shield for benefits held  
12 in the form of a payment check, or demand deposit in a  
13 bank, but did not shield the things bought with the money  
14 made available. The legislature intended no such  
15 illusory protection.

16 In re Williams, 171 B.R. 451, 453 (D.N.H. 1994) (finding that an  
17 exemption for workers' compensation proceeds extends to car  
18 purchased with proceeds) (internal citations omitted and emphasis  
19 in original); See In re Nelson, 179 B.R. 811 (Bankr. W.D. Va. 1994)  
20 (finding that exemption for workers' compensation proceeds extends  
21 to lot and mobile home purchased with the proceeds); contra In re  
22 Burchard, 214 B.R. 494 (Bankr. D. Neb. 1997) (finding that  
23 exemption for proceeds of personal injury lawsuit did not extend to  
24 assets acquired with those proceeds).

25 To the extent there is any ambiguity regarding the Debtor's  
26 ability to convert an exempt asset from one form of property to  
27 another, the Court construes the exemption statutes broadly and  
28 liberally in favor of the Debtor and adopts the rationale set forth  
in Williams, 171 B.R. at 453.

The Court concludes that the Debtor's workers' compensation  
award retained its exempt status, subject to the tracing provision

1 of CCP 703.080,<sup>2</sup> even though the award was converted several times  
2 from one form of asset to another (workers' compensation check into  
3 AXP Account, AXP Account to Escrow for the purchase of the house;  
4 sale of the house; sale proceeds to ex-wife's attorney's trust  
5 account;<sup>3</sup> attorney's trust account to Debtor in form of check;  
6 check deposited into Debtor's Mission Federal Credit Union  
7 account).

8 IV.

9 CONCLUSION

10 The Court denies the Trustee's motion for summary judgment.

11 This Memorandum Decision constitutes findings of fact and  
12 conclusions of law pursuant to Federal Rule of Bankruptcy Procedure  
13 7052.

14  
15 Dated: September 30, 2005

  
16 JOHN J. HARGROVE  
17 UNITED STATES BANKRUPTCY JUDGE  
18  
19  
20  
21

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22 <sup>2</sup> It was essentially undisputed that Debtor adequately traced his workers'  
23 compensation award pursuant to CCP section 703.080. The parties agreed that the  
24 amount of \$2064 should be turned over to the Trustee because they represented  
25 nonexempt funds in the Debtor's Mission Federal Credit Union account as of the date  
26 of the filing.

27 <sup>3</sup> At one point the Trustee argued that the award lost its exempt status when  
28 the proceeds from the sale of the Property went into his ex-wife's attorney's trust  
account since the Debtor no longer had control of the funds. However, there was  
no authority cited nor could this Court find any authority for the Trustee's  
position. Moreover, the ex-wife's attorney held the funds in a fiduciary capacity  
for the benefit of both the ex-wife and the Debtor pending resolution of their  
dissolution.

**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**  
325 West F Street, San Diego, California 92101-6991

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In re: Bankruptcy Case No. 04-07370-H7

**CERTIFICATE OF MAILING**

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

**MEMORANDUM DECISION**

was enclosed in a sealed envelope bearing the lawful frank of the bankruptcy judges and mailed to each of the parties at their respective addresses listed below:

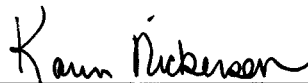
**Attorney(s) for Debtor:**

**Robert B. Shanner, Esq.**  
**Shanner & Shanner**  
**3200 Fourth Avenue, Suite 203**  
**San Diego, CA 92103**

**Attorney(s) for Trustee:**

**Yosina M. Lissebeck, Esq.**  
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**5580 La Jolla Blvd., #613**  
**La Jolla, CA 92037**

Said envelope(s) containing such document was deposited by me in a regular United States Mail Box in the City of San Diego, in said District on September 30, 2005.



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Karen Nickerson (Deputy Clerk)  
Judicial Assistant to the Honorable John J. Hargrove